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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PATTERSON, MARC A

ART UNIT PAPER NUMBER

1772

DATE MAILED: 03/12/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,155

Applicant(s)

FRISK ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to Claim 1, the phrase ‘for paper containers’ is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean ‘for making paper containers.’ The term ‘innermost’ is indefinite, as no inner volume has been recited. For purposes of examination, the term will be assumed to mean ‘outermost.’ The term ‘laminated’ is indefinite, as its meaning is unclear. The term also appears to be directed to a method limitation, which is given little patentable weight as discussed below. The cited values of average density and melt flow index are also indefinite, as no units are cited. For purposes of examination, the units of density will be assumed to be grams per milliliter, and units of melt flow index will be assumed to be grams / 10 minutes. The phrase ‘88 – 103 degree C of a peak melting point’ is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean ‘a peak melting point temperature of 88 – 103 degrees Celsius.’ The term "narrow" in claim 1 is a relative term which renders the claim indefinite. The term "narrow" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Art Unit: 1772

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to Claim 5, the phrase 'for paper containers' is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'for making paper containers.' The term 'innermost' is indefinite, as no inner volume has been recited. For purposes of examination, the term will be assumed to mean 'outermost.' The term 'laminated' is indefinite, as its meaning is unclear. The term also appears to be directed to a method limitation, which is given little patentable weight as discussed below. The cited values of average density and melt flow index are also indefinite, as no units are cited. For purposes of examination, the units of density will be assumed to be grams per milliliter, and units of melt flow index will be assumed to be grams / 10 minutes. The phrase '88 – 103 degree C of a peak melting point' is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'a peak melting point temperature of 88 – 103 degrees Celsius.' The phrase 'in liquid tight' is indefinite as its meaning is unclear. The term "narrow" in claim 5 is a relative term which renders the claim indefinite. The term "narrow" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claim 5 recites the limitation "a discontinuous section" in line 8. There is insufficient antecedent basis for this limitation in the claim. Claim 5 recites the limitation "between two edges" in line 9. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

Art Unit: 1772

invention. With regard to Claim 6, The cited values of average density and melt flow index are also indefinite, as no units are cited. For purposes of examination, the units of density will be assumed to be grams per milliliter, and units of melt flow index will be assumed to be grams / 10 minutes. The abbreviation 'C' is indefinite as it has not been defined. For purposes of examination, the abbreviation will be assumed to mean 'Celsius.' The phrase 'by the differential scanning calorimetry' is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'by differential scanning calorimetry.' The phrase also appears to be directed to a method limitation, which is given little patentable weight as discussed below.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie et al (U.S. Patent No. 5,536,542).

With regard to Claim 1, Gillespie et al disclose a packaging material (column 1, lines 15 – 20) comprising a paper layer and an ethylene vinyl alcohol layer (therefore a barrier layer; column 4, lines 25 – 37) each coated on both sides with polyethylene (column 5, lines 17 – 29) and heat – sealed by sealing the polyethylene layers (column 5, lines 5 – 16); the packaging material therefore comprises a thermoplastic material outermost layer (the polyethylene), a paper substrate layer, a barrier layer and another thermoplastic material outermost layer (the

Art Unit: 1772

polyethylene) in that order; the outermost layers have a thickness of 25 microns (column 6, lines 1 – 14). Gillespie et al fail to disclose a density of 0.915 grams per milliliter, a peak melting point of 88 – 103 degrees Celsius, a melt flow index of 5 – 20 decigrams per minute and a swelling ratio of 1.4 – 1.6. However, Gillespie et al disclose a density of less than 0.92 grams per milliliter (column 1, lines 53 – 63), a peak melting point of 106.9 degrees Celsius (column 7, lines 46 – 60; Table 1), a melt index of 3 decigrams per minute (column 2, lines 60 – 64) and a swelling ratio of 1.4 – 1.6 (column 2, lines 5 – 16). Therefore, the density, peak melting point, melt index (therefore melt flow index) and swelling ratio would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the density, peak melting point, melt index and swelling ratio, since the density, peak melting point, melt index and swelling ratio would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Gillespie et al. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

With regard to the claimed aspect of the polyethylene being a ‘linear’ low density polyethylene, Gillespie et al teach the use of low density polyethylenes (column 1, lines 55 – 59) comprising ethylene and propylene monomer units (column 3, lines 9 – 27); the claimed aspect of the polyethylene being a ‘linear’ low density polyethylene therefore reads on Gillespie et al.

With regard to the claimed aspect of the packaging material being ‘laminated,’ the scope of the claims falls within the limitations of Gillespie et al as discussed above. The method of making the packaging material (product – by – process) is given little patentable weight.

Art Unit: 1772

Applicant would need to demonstrate, by verified showing, the unexpected advantages accruing from the method of making as claimed.

With regard to Claim 4, the packaging material also comprises an adhesive layer (the heat sealed layer discussed above) of the polyethylene between the paper substrate layer and the barrier layer.

With regard to Claim 6, Gillespie et al also disclose a container comprising the packaging material (column 5, lines 26 – 28).

With regard to Claims 2 – 3, Gillespie et al fail to disclose a thickness of the polyethylene outermost and adhesive layers of 2 – 15 microns. However, as discussed above, Gillespie et al disclose a polyethylene thickness of 25 microns. Therefore, the thickness would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the thickness, since the thickness would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Gillespie et al. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie et al (U.S. Patent No. 5,536,542) in view of Ikenoya et al (U.S. Patent No. 5,732,825).

Gillespie et al disclose a packaging container comprising a thermoplastic material as discussed above. Gillespie et al fail to disclose a container comprising a strip tape covering a section of the innermost layer of the container.

Art Unit: 1772

Ikenoya et al teach the use of a strip tape to cover a section of the innermost layer of a container (column 5, lines 35 – 40; Figure 2) for the purpose of making a container which prevents leakage of liquid food (column 5, lines 45 – 50). The desirability of providing for a strip tape to cover a section of the innermost layer of Gillespie et al, which is a container, would therefore have been obvious to one ordinary skill in the art.


It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a strip tape covering a section of the innermost layer in Gillespie et al in order to make a container which prevents leakage of liquid food as taught by Ikenoya et al.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson
Art Unit 1772


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/6/03